

**KENTUCKY PERSONNEL BOARD
MINUTES OF AUGUST 8, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on, August 8, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodman, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Robert B. Frazer, Member
M. Suzanne Cassidy, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Boyce A. Crocker, General Counsel

2. READING OF THE MINUTES OF REGULAR MEETING HELD JULY 18, 2008

A. Discussion of additional language in minutes as suggested by former Board Member, Jack Andrews.

Ms. Cassidy moved to accept additional language (3rd option which mirrors the language in the statute suggested by Chairman Higgins) in the minutes; Mr. Gibson seconded and the motion carried 6-0, with Chairman Higgins voting.

B. Minutes Signed

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Mr. Frazer moved to approve the minutes as corrected. Ms. Hendricks seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek informed the Board members that the installation of the new video equipment is complete in all three hearing rooms. All hearings will now be recorded on DVD. Although there have been a few minor problems, the new equipment is running smoothly.

Mr. Sipek reviewed the Board's 2008 Annual Report with the Board Members. He advised that a new section was added to include investigations and regulations. Mr. Sipek pointed out that there were 226 appeals pending at the beginning of the fiscal year with an additional 418 new appeals filed. A total of 398 final orders (which includes 78 settlements) were sent out, which left 246 appeals pending at the end of the fiscal year. Mr. Sipek stated that 246 appeals is a manageable workload for the office to handle.

Mr. Sipek advised that the office is looking forward to the return of Mr. Crocker from military duty on Monday, August 18, 2008. Mr. Sipek stated that Mr. Crocker will be at the next scheduled Board meeting.

Mr. Sipek stated that it will be six weeks until the next Board meeting; therefore, he anticipates there will be a large agenda.

Chairman Higgins called for approval of the Annual Report.

Ms. Goodmann moved to accept the Board's 2008 Annual Report. Ms. Gibson seconded and the motion carried 5-0.

At the conclusion of Mr. Sipek's report, Chairman Higgins called for the Personnel Cabinet's Report.

4. PERSONNEL CABINET'S REPORT

Dan Egbers, Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Mr. Egbers advised that the Governor's Employee Advisory Council (GEAC) will hold a public meeting next Friday (August 22, 2008) and invited the Board Members to attend. The topic of discussion will be the proposal of modifying the Master Agreement.

Mr. Egbers stated that seven employees recently retired from the Personnel Cabinet, which has left a large gap.

Mr. Egbers stated that the Governor has mandated ethics training for all unclassified employees. The Governmental Service Center (GSC) has contracted with Jill LeMaster, who has retired as Executive Director of the Ethics Commission, to put on formal classes. Also, the Cabinet is putting together an on-line ethics training package for all employees.

Mr. Egbers informed the Board that the Veterans Preference Regulation (101 KAR 2:066) was filed the same day it was approved by the Board at the July Meeting. No problems were reported.

Mr. Egbers advised that open enrollment for health insurance is October 13-24, 2008. Mr. Egbers stated that he should have a more detailed report for the Board at the next Board meeting.

Chairman Higgins asked Mr. Egbers if he would like to report on Randall Arvin's request for investigation of the reorganization at the Transportation Cabinet. In response, Mr. Egbers stated that in a previously submitted report to the Board on behalf of the Cabinet, the Cabinet does not condone employees having to apply for their own positions under a reorganization. However, he believes that Mr. Arvin was referring to abolished positions, which in this case five branches were reduced to four branches and the Branch Managers were asked to interview for the newly created positions. Mr. Egbers stated that this was appropriate as long as the five criteria was utilized in hiring the new branch managers. Mr. Egbers stated that in his best judgment the appeal process would be a better option than an investigative process. Chairman Higgins asked if there had been any layoffs. Mr. Egbers stated that based on his review into the issue no layoffs had occurred. Chairman Higgins asked if any employees had lost pay during the reorganization and Mr. Egbers stated no.

At the conclusion of the Personnel Cabinet's report, Chairman Higgins called the parties to come forward for the first oral argument.

5. ORAL ARGUMENTS

A. ~~Robert Bickett v. Justice and Public Safety Cabinet (Request by Appellee)~~
(Passed to September Meeting by Agreement of the Parties)

B. William Moore v. Justice and Public Safety Cabinet

Present were the Hon. Monica Hill, counsel for Appellant, and the Hon. Will Fogle, counsel for Appellee, who had requested oral arguments. The parties answered questions from the Board.

C. Troy Smith v. Cabinet for Health and Family Services

Present were the Hon. Paul Fauri, counsel for Appellant, who had requested oral arguments, and the Hon. Mona Womack, counsel for Appellee. The parties answered questions from the Board.

6 REQUESTS FOR INVESTIGATION

- A. Transportation Cabinet Reorganization – Request by Randall Arvin
--Response by Personnel Cabinet (Hon. Daniel F. Egbers)
--Response of Transportation Cabinet (Hon. Robert L. Russell)

At the conclusion of oral arguments, Chairman Higgins directed the members to the information packet on the request for investigation by Randall Arvin. Chairman Higgins advised the Members that they should have received the request prior to the Board meeting and that Mr. Egbers response should be in the packet the Members picked up this morning. Chairman Higgins advised that Mr. Egbers had reported earlier before the Board and asked if Mr. Arvin or a representative from the Transportation Cabinet was present. Mr. Sipek stated that although the parties were notified of the matter being put before the Board, they were not specifically invited to be present. Mr. Sipek stated that with the amount of information that was provided to the Board at the last minute, it would not be inappropriate for the Board to defer the matter to the next meeting. Chairman Higgins stated that the parties could be invited to attend the next meeting. Ms. Cassidy stated that although Mr. Egbers said that an appeal was appropriate if an employee had suffered damage, perhaps the Board could learn more information directly from the parties involved. Chairman Higgins stated that he would like to defer the matter so that the Board could hear from the parties.

Mr. Frazer moved to defer this matter to the next meeting of the Board. Ms. Cassidy seconded and the motion carried 5-0.

7. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:38 a.m.)

Mr. Frazer moved to return to open session. Ms. Hendricks seconded and the motion carried 5-0. (11:19 a.m.)

Prior to deciding cases and at the direction of Chairman Higgins, Mr. Frazer moved that an Order, following the Executive Director's recommendation, be issued for ACE & ERA awards for staff. Ms. Cassidy seconded and the motion carried 6-0, with Chairman Higgins voting.

8. **CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Robert Bickett v. Justice and Public Safety Cabinet
(Passed to September meeting by Agreement of the Parties)

B. William Moore v. Justice and Public Safety Cabinet

Mr. Frazer moved to note Appellee's exceptions, Appellant's reply and oral arguments and to accept the recommended order sustaining the appeal to the extent that Appellant be reinstated to his previous position and suspended from duty and pay for 30 days. Ms. Cassidy seconded and the motion carried 5-0.

C. Troy Smith v. Cabinet for Health and Family Services

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0, with Chairman Higgins voting.

D. Terry Day and William Cornelius, Jr. v Transportation Cabinet and Scott Huddleston **Deferred from July meeting**

Ms. Hendricks moved to note Appellee's exceptions, statement of Appellant Cornelius, Jr., and oral arguments and to accept the Final Order as altered and attached to these minutes dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

E. David Waller v. Finance and Administration Cabinet
Deferred from July meeting

Ms. Goodmann moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent that the written reprimand shall be modified. Ms. Hendricks seconded and the motion carried 5-0.

F. George Fortune, Larry Epling, Sam Ezelle and James Leathers v. Cabinet for Health and Family Services and Personnel Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeals. Ms. Hendricks seconded and the motion carried 5-0.

G. Emitt Hall v. Transportation Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

H. Dwight Mitchell Thompson and Harold Gordon Staton v. Bath County Road Department

Ms. Goodmann moved to accept the recommended order dismissing the appeals. Mr. Frazer seconded and the motion carried 5-0.

I. James White v. Cabinet for Health and Family Services

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

9. **WITHDRAWALS**

Ms. Goodmann moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Gibson seconded and the motion carried 5-0.

- A. Rhonda L. Muncy v. Cabinet for Health and Family Services
- B. Kenneth Riley v. Transportation Cabinet
- C. Kandra Jolly v. Justice and Public Safety Cabinet and Personnel Cabinet
- D. Michael Phelps v. Personnel Cabinet
- E. Dinah Smiley v. Personnel Cabinet

10. **SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Frazer seconded and the motion carried 5-0.

- A. Robert Tim Childers v. Justice and Public Safety Cabinet (3 appeals)
- B. Robert Marango v. Tourism, Arts and Heritage Cabinet
- C. LaDawn Perkins v. Justice and Public Safety Cabinet

11. **OTHER**

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Cassidy seconded and the motion carried 5-0. (11:22 a.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Robert B. Frazer, Member

M. Suzanne Cassidy, Member